

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No.300 of 1994.

New Delhi, dated this the 2<sup>nd</sup> of August 1994.

Shri J.P. Sharma, Member (J)

Shri P.T. Thiruvengadam, Member (A)

Shri R.P. Bhardwaj,  
Senior Engineering Assistant,  
Office of the Suptdg. Engineer,  
All India Radio,  
H.P.T. Kingsway,  
Delhi-110009  
and 2 others as per  
Memo of parties.

... Applicants.

By Advocate Shri B.S. Mainee, Counsel.

Versus

Union of India : Through

1. The Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
New Delhi.
2. The Director General,  
All India Radio,  
Parliament Street,  
New Delhi.
3. The Director General,  
Doordarshan,  
Doordarshan Bhawan,  
New Delhi.

... Respondents.

By Advocate Shri P.H. Ramchandani, Counsel.

O R D E R

Shri P.T. Thiruvengadam

The applicants are functioning as Senior Engineering Assistants in All India Radio. A departmental competitive examination was held in the year 1992 for filling up 75% vacancies in the cadre of Assistant Engineer (Group B). It is the case of the applicants that they have qualified in the selection, but yet they have not been given orders of promotion. This O.A. has been filed praying for the

directions to the respondents to promote the applicants as Assistant Engineer (Group B) against the available vacancies without going in for a fresh selection.

2. The main ground advanced by the learned counsel for the applicant is that the notification for the competitive examination mentioned 275 vacancies against 75% quota. However, only around 170 persons have been promoted. Whereas, further 46 candidates which include the 3 applicants and who have qualified have not been promoted.

3. A number of citations were quoted supporting the case of the applicants. Specifically, orders passed by the Hon'ble Supreme Court in Prem Prakash v/s Union of India (AIR 1984 SC Page 1831) was heavily relied upon. Further citations supporting the principles enunciated in Prem Prakash case were also quoted, particularly orders passed by this Bench of the Tribunal in OA No.2317/93 on 5.8.1984. Before we discuss the citations, we briefly cover the main points raised in the reply.

4. The respondents have averred that the number of vacancies notified was 275 subject to revision. This number was only an estimation and large number of vacancies were anticipated, which ultimately did not materialise. Certain additional documents were produced by the respondents and the chart submitted brings out that against 75% quota, total available vacancies in 1992 were only 179 and not 275 as originally hoped. Hence the respondents have indicated that even at the time of notification that the number of vacancies was subject to revision. We have gone through the chart minutely. We do not have any reason to doubt that the actual vacancies in the year 1992 was only 179.

5. It would be relevant to go into details of the Prem Prakash case. This case arose out of a certain appointments made to the Delhi Judicial Service. The Supreme Court had to consider a similar issue in that case as in the present OA. In that context, it was noticed that the Ministry of Home Affairs had issued a circular on 8.2.1982 to which a reference has been made in para 15 of that judgement. That circular was issued to clarify the validity period of a panel of selected candidates. The following clarification was issued.

"The matter has been carefully considered. Normally recruitment, whether from the open market or through a Departmental Competitive Examination, should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancy arising in future: in case names of selected candidates are already available there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already in the list of selected candidates awaiting appointment. Thus there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct recruitment or through a Departmental Competitive Examination.

Once a person is declared successful according to the merit list of selected candidates which is based on the declared number of vacancies the appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change after his name has been included in the list of selected candidates. Thus where selected candidates are awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively, intake for the next recruitment reduced

by the number of candidates already awaiting appointment and the candidates awaiting appointment from a fresh list from the subsequent recruitment of examination."

Considering this circular, the Supreme Court held as follows:

"It is clear from this notification that if selected candidates are available from the previous list there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates".

Thus the purport of the above order is that the selected candidates prepared to the extent of declared vacancies have to be given consideration for promotion. Since the relevant notification mentioned 275 vacancies subject to revision and the actual vacancies at that point of time were only 179, we hold that the candidates in the merit list to the extent of 179 numbers only have a right for consideration for promotion. We are fortified in these views by the orders passed by the SC in State of Bihar v/s Secretariat Assistant Successful Examinees Union (1994 SCC (L&S) 274)

"In that case, an advertisement was issued in 1985 inviting applications for the posts of Assistants falling vacant upto the year 1985-86. The examination was held in November, 1987 but the result was published in the year 1990. Earlier, the number of vacancies existing then was announced on 25.8.87 as 357. Out of the successful candidates, 309

candidates were given appointments. For the rest, those who scored 50% or more were empanelled and were made to wait for the release of further vacancies. As the further vacancies were not notified, the ~~xxx~~ appointments could not be made from this waiting list. Thereupon, the empanelled waiting list candidates approached the Patna High Court and the High Court gave a direction to the respondents to appoint them not only to the vacancies available upto the date of publication of the result, i.e. July 1990, but also to the vacancies arising upto 1991. It is in these circumstances that the Apex Court held that only the vacancies upto 31.12. 1988 shall be filled from the panel prepared on the basis of the 1987 examination. For the vacancies thereafter, a fresh advertisement shall be made for recruitment. In the context, the following observation was made:

"It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary".

6. Thus we have no hesitation to hold that the candidates who ~~were~~ appeared in the 1992 Limited Departmental Examination can stake a claim only for the vacancies available upto that point. For vacancies which arose later, the right of the candidates, who would have since become eligible for appearing in the examination cannot be ~~rested~~.

7. In the further citation relied upon by the applicants namely order passed by this Tribunal in OA No.2317/93 on 5.8.1994, we note that the facts were that at the time of notification for applications, there was no mention of the

number of vacancies. The Tribunal went into office file and found that a particular number of vacancies had been computed and ordered that those who figured in the selection list upto that number had to be accommodated. This citation does not help in the case of the applicant, since we have held after perusing the record <sup>that</sup> the actual number of vacancies at the relevant point of time was only 179. The respondents have brought out that the promotion orders have been issued for 169 candidates leaving out 10 vacancies which could not be filled as 8 vacancies reserved for ST candidates remained vacant for want of successful candidates, and 2 kept vacant as per CAT directions.

Under these circumstances, the OA is dismissed and the interm order passed on 14.2.1994 directing the respondents to keep vacancies for the applicants is vacated. There will be no order as to cost.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)  
MEMBER (A)

J. P. Sharma

(J.P. SHARMA)  
MEMBER (J)

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